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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,848	03/08/2001	Christopher Keith	IVEN125462	1156
52531 7590 05/18/2007 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER BARTLEY, KENNETH	
			ART UNIT 3693	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/801,848	<b>Applicant(s)</b> KEITH, CHRISTOPHER	
	<b>Examiner</b> Kenneth L. Bartley	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-99 and 109-124 is/are pending in the application.
- 4a) Of the above claim(s) 2-39 and 47-99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 40-46 and 109-124 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-124 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u>                                    | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :09/17/2001 (07/17/2002 in system); 07/01/2002; 02/05/2005; 02/05/2005; 10/09/2006; 12/18/2006.

### **DETAILED ACTION**

The examiner for this application has changed. Please indicate Examiner Kenneth Bartley as the examiner of record in all future correspondences.

1. Claims 1, 40-46, and 109-124 have been examined.

### ***Election/Restrictions***

2. Applicant's election without traverse of Claim 1 and species (n) in the reply filed March 2, 2007 is acknowledged. Applicant's new claims 109-124 are also acknowledged as well as amended claims 43, 45, and 46 and cancelled claims 100-108. Accordingly, claims 2-39 and 47-99 are non-elected and claims 1, 40-46 and their related system claims 109-124 have been examined.

### ***Information Disclosure Statement***

3. The information disclosure statements filed September 17, 2001 and July 1, 2002 fail to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has

been placed in the application file, but the information referred to therein has not been considered.

4. The information disclosure statement filed February 5, 2005 (two were apparently filed on that date) fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

5. The information disclosure statements filed February 5, 2005, October 9, 2006, and December 18, 2006 fail to comply with 37 CFR 1.97(c) because they lack the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered. A first Office Action was filed on May 19, 2004, involving restriction requirement.

### ***Double Patenting***

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claim 1 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 11/514,714. This is a

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provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1, 40-46, and 109-124 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,864,827 to Wilson in view of McGuire (Craig McGuire, "FIXML Set for Launch," Wall Street & Technology, March 1999, 17, 3).

Regarding claim 1, 109, and 117:

(Original) A method of facilitating trading on a platform supporting multiple processes, comprising:

**Wilson discloses:**

**A trading system, that is "...a gateway for the transfer of information between financial markets (exchanges) and customers." (col. 1, lines 5-7);**

**Also, based on a "...a system and method whereby a broker can receive transaction information from a customer placed electronically, for example,**

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**via computer or terminal, and transmit the transaction information electronically to a financial market (exchange) without the need to manually reenter the transaction information.” (col. 2, lines 55-60);**

automatically operating at least two market processes having respective market methodologies, and

**that can use more than one market where the “... the transfer of information between one or more customer system(s) which utilize a common protocol and one or more financial market (exchange) system(s) which utilize the same and/or different protocols that differ from the common protocol.” (col. 1, lines 7-13);**

automatically enabling at least two trading processes to trade with each other at the market processes according to the respective market methodologies.

**“The gateway 1 is also coupled to one or more financial exchanges 16, 18, 20, 22, for example, NYSE 16, NASDAQ 18, TSE 20, CBOE 22, which may be, for example, a microcomputer, mainframe computer or some other type of processing system, where the exchange may receive and process orders, via an exchange/gateway interface...” (col. 4, lines 41-51).**

*(It is noted that the specification provides examples of different points in a trading process such as, when an order is received, when a price is received, and when a price improvement occurs ¶[0352].)*

**While Wilson in the business of transferring transaction information discloses processing orders, he does not detail different trading processes.**

**McGuire, reporting in the same field of endeavor of transferring transaction information discloses a system called FIXML and a situation where buy-side order may request a quote from two different systems. McGuire further discloses, “The technology exists, with XML, to stick these data dictionaries in common repositories that can be shared, so therefore, messages can be transferred between different types of protocols.”**

**McGuire, therefore, provides for different trading processes (order and price quote) interfacing with different system protocols using FIXML.**

**Therefore, it would have been obvious to one skilled in the art at the time of invention, motivated by McGuire, to provide for two trading processes using different market methodologies and that this system could eliminate trade failures.**

Regarding claim 40, 110, and 118:

(Original) The method of claim 1, further comprising automatically maintaining a file including status of each of the market processes.

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**Wilson discloses:**

**“Referring now to FIG. 3, there is shown a diagram of a format for tracking data stored in memory 52 as or in a data base according to a first embodiment of the present invention. The tracking data data base may include a number of lists or fields of information relating to the transactions transmitted to the gateway 1 by a customer system.” (col. 5, lines 26-32). Also...“Column 86 includes a list indicating status of the order, i.e., rejected, accepted, filled, partially filled, etc.” (col. 5, lines 46-48).**

**Regarding claim 41, 111, and 119:**

**(Original) The method of claim 40, wherein the market process status file is accessible to the market processes.**

**Wilson discloses:**

**The status information/files are accessible to the market (Fig. 2)**

**Regarding claim 42, 112, and 120:**

**(Original) The method of claim 40, wherein the market process status file is accessible to the trading processes.**

**Wilson discloses:**

**The status information/files are accessible to the trading process (Fig. 2 and Fig. 3)**

**Regarding claim 43, 113, and 121:**

**(Currently amended) The method of claim 42, further comprising checking an access permission for each of the trading processes before providing access to the market process status file.**

**Wilson discloses:**

**A security system to protect and limit access information...**

**“Communications between the gateway 1 and customer system(s) 2, 4 and broker system(s) 6 may also include some form of security such as, for example, coding of information, time offsets and password protection, to insure the integrity and secrecy of the information being transmitted.” (col. 6, lines 12-17)**

**Regarding claim 44, 45, 114, 115, 122, and 123:**

**44. (Original) The method of claim 40, further comprising automatically updating the status of one of the market processes that has changed its operational mode.**

**45. (Currently amended) The method of claim 44, wherein the operational mode is an in process mode.**

**Wilson discloses:**

**The status column (Fig. 3, ref. 86) shows “PARTIAL FILL” and “FILLED” orders, indicating in-process information. Also... “The transaction confirmation indicates the status of the transaction and may include**



**information such as, financial instrument symbol, order accepted and filled/partially filled or rejected, quantity, price, etc.” (col. 7, lines 34-38).**

Regarding claim 46, 116, and 124:

(Currently amended) The method of claim 44, wherein the operational mode is a fast symbol mode.

**Wilson discloses:**

**“The processor receives transaction information from the customer system in a first format, converts it to a second format and transmits the transaction information to the financial market system.” (Abstract). The customer then has the ability to transmit an order in a “fast symbol mode” method, which is defined in the specification (¶ [0090]) as “all posted orders are available for immediate execution.”**

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth L. Bartley whose telephone number is (571) 272-5230. The examiner can normally be reached on Monday through Friday, 8:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jagdish Patel can be reached on (571) 272-6748. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 5/14/07  
JAGDISH N. PATEL  
PRIMARY EXAMINER